

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

ALBERTO DOCOUTO,

Plaintiff,

v.

DAVID G. NANZ,

Defendant.

2:13-cv-00711-GMN-VCF

**ORDER AND
REPORT & RECOMMENDATION**

(Motion/Application to Proceed *In Forma Pauperis* #1 and Screen Complaint #1-1)

Before the court are plaintiff Alberto Docouto's Motion/Application to Proceed *In Forma Pauperis* (#1) and Complaint (#1-1).

I. *In Forma Pauperis* Application

Plaintiff Alberto Docouto asserts in his motion/application that he is unemployed and does not receive supplemental income of any kind. (#1). Plaintiff also asserts that he is incarcerated and has insufficient funds in his prison account to pay the \$350.00 filing fee. *Id.* Accordingly, plaintiffs' request to proceed *in forma pauperis* is granted pursuant to § 1915(a).

II. Screening the Complaint

Upon granting a request to proceed *in forma pauperis*, a court must additionally screen a complaint pursuant to § 1915(e). Specifically, federal courts are given the authority to dismiss a case if the action is legally "frivolous or malicious," fails to state a claim upon which relief may be granted, or seeks monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal*, 129 S.Ct. 1937, 1949 (2009)

1 (internal quotations and citation omitted).

2 In considering whether the plaintiff has stated a claim upon which relief can be granted, all
3 material allegations in the complaint are accepted as true and are to be construed in the light most
4 favorable to the plaintiff. *Russell v. Landrieu*, 621 F.2d 1037, 1039 (9th Cir. 1980). Allegations of a
5 *pro se* complaint are held to less stringent standards than formal pleading drafted by lawyers. *Haines*
6 *v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam). When a court dismisses a complaint under § 1915(e),
7 the plaintiff should be given leave to amend the complaint with directions as to curing its deficiencies,
8 unless it is clear from the face of the complaint that the deficiencies could not be cured by amendment.
9 *See Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995) (citation omitted).

10 **A. Plaintiff's Allegations**

11 Plaintiff states that his complaint is filed pursuant to 42 U.S.C. § 1983, 28 U.S.C. § 1331, and
12 the "Tort Claim Act." (#1-1). Plaintiff asserts in the "Nature of the Case" section of his complaint that
13 "petitioner assert[s] that the defendants conspired (sic) to hiring and silents (sic) petitioner allegations
14 in order to perform a confiscation procedure." *Id.* Plaintiff names FBI Special Agent David G. Nanz
15 as the defendant, yet refers to a conspiracy between the "defendants." *Id.* Plaintiff asserts that his
16 following civil rights were violated: (1) "whether FBI Special Agent David G. Nanz conspired (sic)
17 to schedule a confiscation procedure," (2) whether FBI Special Agent David G. Nanz intentionally hired
18 petitioner documents," and (3) "whether the FBI Special Agents conspired (sic) to performer (sic) a[n]
19 illegal confiscation procedure." *Id.*

20 Immediately following each of plaintiff's causes of action, it states "Supporting Facts: See
21 memorandum of law in support." *Id.* Plaintiff states in his request for relief that he is entitled to "re-
22 establishment of all the properties confiscated by the government and compensation for damages and
23 other (sic) set forth at petitioner memorandum of law in support." *Id.* Plaintiff did not attach a
24 memorandum of law containing factual allegations to the complaint (#1-1) or file one separately in this
25 action.

1 As plaintiff has not provided the court with “sufficient factual matter” supporting his claims
 2 or stated what civil rights the defendant violated under 42 U.S.C. § 1983, the complaint should be
 3 dismissed *without prejudice* for plaintiff to file an amended complaint curing such deficiencies. *See*
 4 28 U.S.C. § 1915(e)(2); *Ashcroft*, 129 S.Ct. at 1949; *Cato*, 70 F.3d at 1106.

5 Accordingly, and for good cause shown,

6 IT IS ORDERED that plaintiff Docouto’s Motion/Application to Proceed *In Forma Pauperis*
 7 (#1) is GRANTED.

8 IT IS FURTHER ORDERED that plaintiff is permitted to maintain the action to conclusion
 9 without necessity of prepayment of any additional fees, costs, or security. This order granting *forma*
 10 *pauperis* status does not extend to the issuance of subpoenas at government expense.

11 **RECOMMENDATION**

12 IT IS RECOMMENDED that the Clerk of Court be ordered to file the complaint (#1-1).

13 IT IS FURTHER RECOMMENDED that all of plaintiff’s claims be DISMISSED *without*
 14 *prejudice*, for plaintiff to file an amended complaint curing the deficiencies within thirty (30) days from
 15 the entry of the District Judge’s order addressing this Report & Recommendation.

16 **NOTICE**

17 Pursuant to Local Rule IB 3-2, any objection to this Finding and Recommendation must be in
 18 writing and filed with the Clerk of the Court within fourteen (14) days. The Supreme Court has held
 19 that the courts of appeal may determine that an appeal has been waived due to the failure to file
 20 objections within the specified time. *Thomas v. Arn*, 474 U.S. 140, 142 (1985). This circuit has also
 21 held that (1) failure to file objections within the specified time and (2) failure to properly address and

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1 brief the objectionable issues waives the right to appeal the District Court's order and/or appeal factual
2 issues from the order of the District Court. *Martinez v. Ylst*, 951 F.2d 1153, 1157 (9th Cir. 1991); *Britt*
3 *v. Simi Valley United Sch. Dist.*, 708 F.2d 452, 454 (9th Cir. 1983).

4 DATED this 13th day of May, 2013.

5 

6 **CAM FERENBACH**
7 **UNITED STATES MAGISTRATE JUDGE**